**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO. 368 OF 2005**

**WITH**

**CIVIL APPLICATION NO. 839 OF 2005**

Pandharinath P. Chavan ..Appellant

versus

Vikas T. Thombare & Anr. ..Respondents

Mr. N. N. Bhadrashete for the Appellant.

Mr. M. S. Topkar for the Respondent No.1.

Smt. Urmila Sanil for the Respondent No.2.

**CORAM : D. G. DESHPANDE,J.**

**DATE : 18TH JULY,2005**

**ORAL ORDER :**

1. Heard Advocate for the Appellant and the Respondents.

2. Advocate for the appellant drew my attention to the finding of the Tribunal on issue No.1 which was "whether the petitioner proved that he sustained injuries due to rash and negligent driving of the driver of the truck". The Tribunal in paragraph 6 observed and held that :

> "..When the accident has occurred due to the use of the truck, one has to conclude that it has occurred due to the negligence on the part of the owner of the truck.."

This is absolutely perverse finding. No court can give such a finding, therefore, no such presumption and only on this ground alone the order has to be set aside. Therefore, Appeal is admitted and by consent, taken up for final hearing.

3. Counsel for the Insurance Company states that Insurance Company has deposited the amount and the claimant has withdrawn the amount, and therefore their interest should be protected.

4. In view of the aforesaid facts, I pass the following order :

**ORDER**

. The impugned order is quashed and set aside.

. The matter is sent back to the Tribunal to decide the issues again, if necessary, by recording evidence and giving opportunity to all the parties in that regard. Claimant who has withdrawn the

amount shall furnish the bond to the Tribunal that in case if they loose, they will return the amount and redeposit in the Tribunal so that the Insurance Company can withdraw the amount.

. Appellant is allowed to withdraw Rs.25,000/- which he has deposited at the time of filing of this appeal.

. Tribunal to decide the case afresh on merits within three months of the date of the first appearance of the parties, which will be 16.8.2005. All issues are kept open.

. Appeal and Civil Application disposed of accordingly.

18.7.2005 (D.G. DESHPANDE, J.)